

SUBJECT: Pipeline easements prior to September 1, 1993

COMMITTEE: Energy Resources — favorable, committee substitute recommended

VOTE: 8 ayes — Earley, Cook, Driver, Kuempel, Ramsay, Raymond, Tallas, West
0 nays
3 absent — Holzheuser, Culberson, Dutton

WITNESSES: (On original version):

For — Phillip Kothmann; Glenn Wessels; Randolph Sagebiel; Charles Spangle; Sherry Caffey, Jones Oil Co; David Garrett; Ken Bull, McCulloch County Property Owners Association; Jean Dickerson; Dan Byfield, Texas Farm Bureau (Registered only — John Neibel; Doris Neibel; Dean Spangler; Margaret Wessels; David Frederick, Central Texas Landowners Coalition; Sharon Sagebiel; Barbara Bull; James Werchan; Sophie Werchan)

Against — Ken Rigsbee, Phillips Petroleum Co.; Patrick Nugent, Valero Natural Gas Partners; J. Neal Miller, Chevron Corporation (Registered only — Joe Allen, Enron Corp.; James Scott; Eileen Campbell, Marathon Oil; Patrick Nugent, Association of Texas Intrastate Natural Gas Pipelines; Steve Perry, Texaco; Rob Looney, Mid-Continent Oil & Gas Association; K. Daniel Hinkle, British Petroleum, Meridian Oil; Larry Milner, Texas Chamber of Commerce; Billie Meador, Panhandle Eastern Corp; Bob Stout, Mitchell Energy & Development; Floyd Bowen, Exxon Corp; Patrick Mullens, GPM Gas Corp.)

On — (Registered only — David Gloier, Texas Veterans Land Board; Bruce Salzer, Texas Veterans Land Board)

BACKGROUND: Chapter 111 of the Natural Resources Code regulates common carriers that own, operate or manage at least part of a pipeline for the transportation of crude petroleum, coal, carbon dioxide, or hydrogen for the public for hire, or engage in the business of transporting crude petroleum by pipeline. All common carriers have the unlimited right and power of eminent domain.

In a series of cases, including the 1963 case of *Dwyer v. Houston Pipe Line Company*, and the 1974 case of *Harris v. Phillips Pipe Line Company*, the Texas Supreme Court has found that when a grant of easement is general as to the place of laying a pipeline and its size, it becomes fixed and certain after the pipe is laid and used with mutual acquiescence, with its boundaries being those "reasonably necessary" for full enjoyment of the easement granted.

Art.1, sec. 16, of the Texas Constitution states that "no bill of attainder, ex post facto law, retroactive law, or any law impairing the obligation of contracts shall be made".

Under the federal Occupational Safety and Health Act, the state and its common carriers are required to meet certain safety criteria to protect the welfare of employees in potentially dangerous working conditions.

DIGEST:

CSHB 714 would add Natural Resources Code sec. 111.0194, which would create a presumption that an easement created through grant or power of eminent domain exercised for the benefit of one common carrier prior to September 1, 1993, would create an easement in favor of the common carrier pipeline or its successor, that extends to a width of 50 feet for each pipeline unless the terms of the grant or condemnation judgement expressly provide otherwise or the easement rights prescriptively owned through actual use are greater.

The bill would not be apply to pipeline easements granted under the terms of an oil and gas or an oil, gas and mineral lease, or to any easement authorizing the construction for gathering lines. The limitation of width could be rebutted with evidence demonstrating that a greater width is reasonably needed for operation, construction of additional lines, maintenance, repair, replacement, safety or surveillance, or as a buffer zone for the protection of the safe operation, along with any other evidence deemed relevant by the court. The bill would not limit rights of ingress or egress from easements existing under common law.

CSHB 714 would take effect immediately if passed by two-thirds of both houses.

**SUPPORTERS
SAY:**

CSHB 714 would allow carriers a total easement of 50 feet in any direction to make repairs or move existing lines, which is a sufficient amount of space for companies to safely undertake these activities. This bill also allows carriers who require more than 50 feet to petition a court for expansion. Although carriers should retain their right to eminent domain, they should not be given blanket authority to ravage surrounding property.

Common carriers operating without easement restrictions have an unlimited right of eminent domain, allowing them to take over any property that they want without restriction as to the type of damage that will be caused or the infringement that will be made on property owners. Often, in order to avoid having to shut down pipeline operations, carriers will install a new line rather than repair the one currently used, resulting in twice as much digging on people's yards and land. CSHB 714 seeks to ensure that these companies should not be allowed to save money at the expense of Texas landowners and should be limited to the amount of land that can be claimed through eminent domain.

Reimbursement for property damage cannot fully replace lost trees and topsoil, nor can it fully remunerate landowners for the risks involved with pipelines underlying their property. By forcing common carriers to undertake the least intrusive methods of pipeline construction, repair and replacement, the citizens and environment of the state would be protected from certain carriers' abusive practices.

By preserving the rights of companies that are currently using undefined easements of larger than 50 feet, the bill would stay within the limits of Art. 1, sec. 16 of the Texas Constitution and not impair the obligations of existing contracts. The bill recognizes the fact that some companies or pipeline sites have traditionally required larger easements to transport equipment or lay pipe and would give these carriers the flexibility to continue operating under current procedures without infringing on existing contracts.

CSHB 714 would only affect undefined easements on pipelines laid before September 1, 1993, and would not alter any existing contractually determined easements, regardless of size.

The Supreme Court cases decided in this area are variable, basically finding the appropriate size of each easement is subject to interpretation dependent upon site characteristics and previous company actions, giving little direction to these currently unregulated activities. CSHB 714 would only give the state, its citizens, and all common carriers guidelines to rely on.

Unlike the original bill, CSHB 714 would permit companies to move from the horizontal line and place new pipeline next to the original, rather than have to halt operations, remove the old and replace it with the new, making this bill as burden-free as possible to ensure that carriers are operating safely and in compliance.

OPPONENTS
SAY:

By nullifying existing contract provisions, this bill would be in direct violation of Art. 1, sec. 16, of the Texas Constitution. Before constructing any pipeline, common carriers enter into contracts with landowners ensuring them reimbursement for damages and creating a right of easement. In many contracts, the right of easement was specifically left undefined. By overturning that part of any existing contract, this bill would be impairing the obligations of contracts.

This bill also would constitute a "taking" of property without just compensation. Under Chapter 111 of the Natural Resources Code, common carriers have the right to all property that is necessary to construct and maintain a pipeline. Yet CSHB 714 would retroactively take away this authority, without reimbursing the company for the lost easement.

Forcing pipeline companies to appeal to a court to obtain a larger easement would be burdensome, especially since the carrier would be required to know the size of the easement needed before the actual work had begun. In many cases, companies would not be able to determine that a larger easement is necessary until work had begun, forcing the carrier to hold up activities and spend time in court while contractors and employees are being paid thousands of dollars per day to finish the job. As a result of this bill, many overcautious companies would fill courtrooms attempting to obtain larger easements before work begins to avoid this inefficient and costly scenario.

This bill is unnecessary because the Texas Supreme Court has already determined that an undefined easement is limited only to that land that is "reasonably necessary" to fulfillment of the company's goals. As such, if a company only needs 50 feet to lay or repair pipe, that is what it would be entitled to both under this bill and under current law.

This bill would essentially be ineffective because any common carrier can argue that it requires more than the allotted space or that its easements rights are prescriptively owned and are greater than the 50 foot standard. Because this bill does not define what evidence would be required to determine whether the expansion is *reasonably needed*, companies would be able to barrage a judge who does not specialize in these types of decisions with seemingly overwhelming information supporting their case with no chance for rebuttal by an opposing party.

OTHER
OPPONENTS
SAY:

The allotment of 50 feet is not sufficient and should be changed to reflect the needs of the pipeline companies and to protect worker safety. Common carriers are required under the federal Occupational Safety and Health Act to maintain certain safe distances for employees working in potentially dangerous conditions with large machinery. By allowing only 50 feet, employees would be placed in hazardous situations because they could not sustain a sufficient distance from the work area. This bill would be in direct conflict with the federal requirements and could result in years of unnecessary and expensive litigation.

NOTES:

The committee substitute changed the original bill by removing the time limitations; increasing the easement to 50 feet without reference to a centerline; removing the limitations on pipeline placement rights; exempting carriers who have oil and gas or oil, gas and mineral leases; permitting rebuttal of the 50 foot easement; and specifically specifying that the rights of ingress and egress are not limited.

The companion bill, SB 172 by Sims, which is identical to CSHB 714, passed the Senate on May 11.